apparent on the face of the instrument. *Lake Co.* v. *Rollins*, 130 U. S. 662, 670. The courts of Texas have apparently not been consistent in their decisions relative to the competency of children to testify under oath, for in *Reyna* v. *State* (1903), — Tex. Crim. App. —, 75 S. W. Rep. 25, and in *Click* v. *State* (1902), — Tex. Crim. App. —, 66 S. W. Rep 1104, children below the age of eight years were permitted to testify under oath. An examination of the statutes and constitutions of many of the states fails to disclose like statutory provisions except in Illinois, where it is provided (Starr & Curtis Ann. St. Vol. 2, p. 2825, ¶ 5) that all oaths shall be taken subject to the pains and penalties of perjury; that no person below the age of ten years shall be convicted of a crime or misdemeanor (Starr & Curtis Ann. St., Vol. 1, p. 1357, ¶ 462) and yet the testimony of children under this age is there received unchallenged. *Shannon* v. *Swanson, supra.*

COMPENSATION FOR PARTY WALLS AS BETWEEN SUBSEQUENT GRANTEES.—In the recent case of *Loyal Mystic Legion et al.* v. *Jones* (1905), — Neb. —, 102 N. W. Rep. 621, the facts were that a party wall had been erected under an agreement between the builders and their adjoining lot owner, which provided that the wall should be one-half upon the lot of each party and that the adjoining owner—the non-builder—"his heirs, executors, administrators or grantees" might use the wall for any building he "or his grantees may erect," provided that he "or his grantees before proceeding to join any other buildings to the said party wall and before making any use thereof or breaking into the same should pay or secure to be paid to said parties of the first part [the builders] or their grantees one-half of the actual cost of said party wall or so much thereof as shall be joined or used as aforesaid." This agreement having been executed, acknowledged and recorded, the lots were conveyed to others by the contracting parties and the question before the court was whether, when the wall was used by the present owner of the non-builder's lot, compensation should be made to the present owner of the builder's lot or to an assignee of the original builder. It was held that, as the contracting parties intended "that whoever became the owner of either lot should stand in the shoes of the makers of the party wall agreement, with respect to its provisions," the present second builder should compensate the first builder's successor in title.

In arriving at this conclusion, however, the principles of covenants running with the land are expressly disregarded by the court, reliance being placed upon the provision in the agreement that the money for the use of the wall should be paid to the builders or "their grantees," the court saying, "it is not necessary to say that the personal obligation to pay for the wall runs with the land in order to carry into effect the provisions of the contract under consideration." And particular emphasis is laid upon the fact that the present agreement names "grantees" instead of "assigns"—the latter term being said by the court to be appropriate to transfers of personalty rather than realty. But this latter distinction seems unnecessary in the consideration of such cases for the term "assigns" has been used from early times as applicable to

successors in title to realty. Moreover, there seems no greater difficulty in holding that such an agreement concerns the land and therefore may be a covenant running with the land, than in holding that the obligations imposed by the agreement may be enforced between these later grantees between whom there is no privity of contract. Several previous Nebraska cases cited by the court had established the doctrine that the burden of such a covenant might run with the land, though in *Cook* v. *Paul* (1903), 93 N. W. Rep. 430 it was held that the *benefit* was personal irrespective of the terms of the agreement—a conclusion opposed to that of the principal case. This opposition is especially interesting in view of the pains taken by the Commissioners in *Cook* v. *Paul* in their examination of the question; for they said: "as a rule of property, as well as of contract, forming an essential part of the law *whose foundations we are laying* in this comparatively new state, it is entitled to the most careful consideration and we shall endeavor to *settle it* in accordance with the weight of judicial opinion, at the risk of a seemingly prolonged review of the authorities." Now come the Commissioners in this last case and say that *Cook* v. *Paul* is "unofficial," and "we do not, therefore, consider it as in any way establishing the legal proposition contained in the opinion." *Cook* v. *Paul*, however, furnishes the text for a recent valuable discussion of the question as to the enforcement of the obligation to contribute to the cost of party walls, by or against grantees or successors in title, in 66 L. R. A. 673.